

NOTICE

Amendment to 803 KAR 2:181E, Recordkeeping and reporting occupational injuries and illnesses, was filed with the Legislative Research Commission on May 13, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.

FILED WITH LRC TIME: <u>3:08 pm</u> MAY 13 2021 Emily B Caudill REGULATIONS COMPILER
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STATEMENT OF EMERGENCY
803 KAR 2:181E


This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates.

Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky.

The Administrative Regulation Review Subcommittee, at its May 11, 2021 meeting, requested the Department of Workplace Standards refile 803 KAR 2:180E as a new regulation to meet the requirement established in Senate Bill 65 of the 2021 General Session. This emergency regulation fulfills the subcommittee's request. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding.

This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.


ANDY BESHEAR, Governor


LARRY ROBERTS, Secretary
Labor Cabinet


KIMBERLEE C. PERRY, Commissioner
Department of Workplace Standards

1 Labor Cabinet
2 Department of Workplace Standards
3 Division of Occupational Safety and Health Compliance
4 Division of Occupational Safety and Health Education and Training
5 (New emergency administrative regulation)
6 803 KAR 2:181E. Recordkeeping and reporting occupational injuries and illnesses.
7 RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904
8 STATUTORY AUTHORITY: KRS 338.061, 338.161
9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of
10 Workplace Standards to promulgate administrative regulations for the collection, compilation,
11 and analysis of occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes
12 requirements for the recording and reporting of occupational illnesses and injuries. This
13 emergency administrative regulation establishes recordkeeping and reporting requirements for
14 employers pursuant to KRS Chapter 338.
15 Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body
16 including bone tissue is removed.
17 (2) "C.F.R." means Code of Federal Regulations.
18 (3) "Employee" is defined by KRS 338.015(2).
19 (4) "Employer" is defined by KRS 338.015(1).
20 (5) "Hospitalization" means formal admission to a hospital or clinic for care or treatment.
21 (6) "Loss of eye" means the physical removal of an eye from the socket.

1 (7) "Occupational Safety and Health Act" or "OSHA" means KRS Chapter 338.

2 (8) "Secretary of Labor" means the Secretary of the United States Department of Labor or the
3 Secretary of the Labor Cabinet.

4 (9) "Section 11(c) of the Act" means KRS 338.121(3).

5 (10) "Work-related" means "work-related" or "work-relatedness" as established in 29 C.F.R.
6 1904.

7 Section 2. Except as modified by the definitions in Section 1 and the requirements in Sections 3
8 and 4 of this emergency administrative regulation, an employer shall comply with 29 C.F.R. Part
9 1904, Recording and Reporting Occupational Injuries and Illnesses, published by the Office of
10 the Federal Register, National Archives and Records Administration.

11 Section 3. Reporting Fatalities, Amputations, Hospitalizations, or Loss of Eye. (1) The reporting
12 requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

13 (2) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace
14 Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, the death
15 of an employee as a result of a work-related incident, including death resulting from a heart
16 attack.

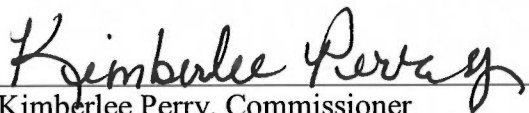
17 (3) The report required pursuant to subsection (2) of this section shall be made within eight (8)
18 hours from when the death is reported to the employer, the employer's agent, or another
19 employee.

20 (4) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace
21 Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of
22 the following that occurs as a result of a work-related incident:

23 (a) Amputation suffered by an employee;

- 1 (b) Employee's loss of an eye; or
- 2 (c) Hospitalization of an employee, including hospitalization resulting from a heart attack.
- 3 (5) The report required pursuant to subsection (4) of this section shall be made within seventy-
- 4 two (72) hours from when the amputation, loss of an eye, or hospitalization is reported to the
- 5 employer, the employer's agent, or another employee.
- 6 Section 4. If the employer cannot speak with someone in the Frankfort office, the employer shall
- 7 make the report required pursuant to Section 3 of this emergency administrative regulation to the
- 8 OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742).

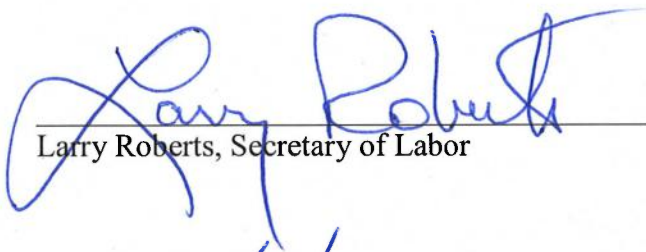
As approved by



Kimberlee Perry, Commissioner
Department of Workplace Standards

5.13.21

Date



Larry Roberts, Secretary of Labor

5/13/2021

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on June 21, 2021 at 10:00 a.m. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at

<https://us02web.zoom.us/j/85224369475?pwd=MGUwWUJPZTBGNHJsZFV2cnZWbVM1UT09>, passcode 205965; or by telephone at (713) 353-0212, or (888) 822-7517 toll free, conference code 194378.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:181E

Contact person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms. Section 2 requires employers to comply with the requirements of 29 CFR Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this emergency administrative regulation. Sections 3 and 4 establish the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. This emergency administrative regulation retains other provisions of the prior regulation that have been effective since August 7, 2006.

(b) The necessity of this administrative regulation: The Administrative Regulation Review Subcommittee, at its May 11, 2021 meeting, requested the Department of Workplace Standards refile 803 KAR 2:180E as a new regulation to meet the requirement established in Senate Bill 65 of the 2021 General Session. This emergency regulation fulfills the subcommittee's request. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures the state is as effective as the federal requirement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects employers in the Commonwealth engaged in all activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including: (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This emergency administrative regulation promotes employee safety and health throughout Kentucky and ensures the state program as effective as the federal program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no new costs associated with this emergency administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There are no fees associated with this emergency administrative regulation. There is no need to increase funding for this emergency administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:181E

Agency Contact: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 USC 667

2. State compliance standards.

The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i).

3. Minimum or uniform standards contained in the federal mandate.

The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a), and 29 CFR 1956.10(i).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This emergency administrative regulation differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This emergency administrative regulation allows employers greater reporting flexibility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 803 KAR 2:181E

Contact Person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
This emergency administrative regulation affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.7(a), 29 CFR 1904.37(a), 29 CFR 1904.37(b)(1), 29 CFR 1904.37(b)(2), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1956.2(a), 29 CFR 1956.10(i)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?
None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?
None.

(c) How much will it cost to administer this program for the first year?
There are no costs associated with this emergency administrative regulation.

(d) How much will it cost to administer this program for subsequent years?
There are no costs associated with this emergency administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This emergency administrative regulation does not impose any additional expenditures to employers.

Justification

Public Law 91-596 84 STAT. 1590 (OSH Act of 1970)

Section 18, State Jurisdiction and State Plans

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgement --

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment....

29 CFR 1902.3(c), Standards

(1) The State plan shall include or provide for the development or adoption of, and contain assurances that the State will continue to develop or adopt, standards which are or will be at least as effective as those promulgated under Section 6 of the Act....

29 CFR 1902.3(d), Enforcement

(1) The State plan shall provide a program for the enforcement of the State standards which is, or will be, at least as effective as that provided in the Act, and provide assurances that the State's enforcement program will continue to be at least as effective as the Federal program....

(2) The State plan shall require employers to comply with all applicable State occupational safety and health standards covered by the plan and all applicable rules issued thereunder, and employees to comply with all standards, rules, and orders applicable to their conduct.

29 CFR 1902.3

(j) Employer records and reports. The State plan shall provide assurances that employers covered by the plan will maintain records and make reports to the Assistant Secretary in the same manner and to the same extent as if the plan were not in effect.

29 CFR 1902.7, Injury and Illness Recording and Reporting Requirements

(a) Injury and illness recording and reporting requirements promulgated by State-Plan States must be substantially identical to those in 29 CFR part 1904 on recording and reporting

occupational injuries and illnesses. State-Plan States must promulgate recording and reporting requirements that are the same as the Federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by State-Plan States may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, States must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives. State-Plan States must extend the scope of their regulation to State and local government employers.

29 CFR 1904.37, State Recordkeeping Regulations

(a) Basic requirement. Some States operate their own OSHA programs, under the authority of a State plan as approved by OSHA. States operating OSHA-approved State plans must have occupational injury and illness recording and reporting requirements that are substantially identical to the requirements in this part (see 29 CFR 1902.3(j), 29 CFR 1902.7, and 29 CFR 1956.10(i)).

(b)(1) State-Plan States must have the same requirements as Federal OSHA for determining which injuries and illnesses are recordable and how they are recorded.

(b)(2) For other Part 1904 provisions (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement), State-Plan State requirements may be more stringent than or supplemental to the Federal requirements, but because of the unique nature of the national recordkeeping program, States must consult with and obtain approval of any such requirements.

29 CFR 1953.1

(a) This part implements the provisions of section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act" or the "Act") which provides for State plans for the development and enforcement of State occupational safety and health standards. These plans must meet the criteria in section 18(c) of the Act, and part 1902 of this chapter (for plans covering both private sector and State and local government employers) or part 1956 of this chapter (for plans covering only State and local government employers), either at the time of submission or -- where the plan is developmental -- within the three year period immediately following commencement of the plan's operation. Approval of a State plan is based on a finding that the State has, or will have, a program, pursuant to appropriate State law, for the adoption and enforcement of State standards that is "at least as effective" as the Federal program.

(b) When submitting plans, the States provide assurances that they will continue to meet the requirements in section 18(c) of the Act and part 1902 or part 1956 of this chapter for a program that is "at least as effective" as the Federal. Such assurances are a fundamental basis for approval of plans. (See § 1902.3 and § 1956.2 of this chapter.)....

29 CFR 1956.2, General Policies

(a) Policy. The Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will approve a State plan which provides an occupational safety and health program for the protection of State and local government employees (hereinafter State and local government employees are referred to as public employees) that in his judgment meets or will meet the criteria set forth in 1956.10. Included among these criteria is the requirement that the State plan for public employees (hereinafter such a plan will be referred to as the plan) provides for the development and enforcement of standards relating to hazards in employment covered by the plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced under section 6 of the Act....

29 CFR 1956.10, Specific Criteria

(i) Employer records and reports. The plan shall provide assurances that public employers covered by the plan will maintain records and make reports on occupational injuries and illnesses in a manner similar to that required of private employers under the Act.